

**STATE OF WEST VIRGINIA  
WEST VIRGINIA SECURITIES COMMISSION  
BEFORE THE SECURITIES COMMISSIONER  
CHARLESTON, WEST VIRGINIA 25305**

**IN THE MATTER OF:**

**CASE NO. 02-1288**

**CANADIAN BROKER-DEALERS AND  
ORDER APPROVING  
CANADIAN RETIREMENT PLANS  
EXEMPTIONS**

**Dorsey & Whitney LLP  
Attn.: C.L. Potuznik  
50 South Sixth Street, Ste. 1500  
Minneapolis, MN 55402-1498**

**ORDER**

Pursuant to the authority granted by Chapter 32 of the West Virginia Code, 1931, as amended, the West Virginia Uniform Securities Act, hereinafter referred to as the "Act", and particularly Chapter 32, Article 4, Section 412 of the Act, and the Rules [and] Regulations promulgated thereunder, the Staff of the Commissioner of Securities (hereinafter referred to as the "Staff"), has reviewed the application of **CANADIAN BROKER-DEALERS AND CANADIAN RETIREMENT PLANS**, (the "Applicant"), for an exclusion from the definition of broker-dealer, a transactional exemption from security registration, and advertising filing requirements of Chapter 32, Articles 4, and 3, Sections 401(c) , 301, and 403 of the Act. Based upon said review and Staff recommendation, the Commissioner of Securities (the "Commissioner"), is of the opinion and finds as follows:

**FINDINGS OF FACT**

1. On December 5<sup>th</sup> 2002, the Applicant submitted an application for a definitional exclusion from broker-dealer, a transactional exemption from security registration, and

advertising filing requirements, pursuant to Chapter 32, Articles 4, and 3, Sections 401(c), 301, and 403 of the Act.

2. The exemption is requested for the purpose of transactions whereby the Applicant and their sales agents are allowed in the limited contexts as set forth herein to: (a) transact securities business and effectuate securities transactions without registration in this state, with certain persons in West Virginia described with more particularity below, who are either: (1) persons from Canada who are temporarily present in West Virginia, or are (2) holders of, or contributors to, self-directed, tax-advantaged Canadian retirement plans; and to: (b) provide a securities registration exemption as well as an advertising filing exemption for the securities transactions effected for such persons in West Virginia.

3. This Order is necessary and appropriate in the public interest for protection of investors and to achieve maximum uniformity.

### **CONCLUSIONS OF LAW**

4. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may, from time to time, make orders as necessary to carry out the provisions of the Act.

5. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.

### **IT IS, THEREFORE, ORDERED THAT:**

6. The Applicant's request for a definitional exclusion from broker-dealer, a transactional exemption from securities registration, and advertising filing requirements pursuant to Chapter 32, Articles 4, and 3, Sections 401(c), 301, and 403 of the Act be and it hereby is approved, PROVIDED:

7. A broker-dealer defined in Chapter 32, Article 4, Section 401(c) does not include:

8. A broker-dealer located in Canada that has no office or physical presence in this state, and that satisfies all of the following conditions:

9. The broker-dealer effects or attempts to effect transactions in securities only with persons specified in section 401(c) of the Act, or with or for any of the following:

(a) A person who is in this state temporarily and who, while a resident of Canada and before entering this state, established a bona fide business-client relationship with the broker-dealer; and/or

(b) A person who is present in the state, whose transactions are in a self-directed, tax-advantaged plan in Canada of which the person is the holder or contributor.

10. The broker-dealer is registered with or a member of a self-regulatory organization in Canada, a stock exchange in Canada, or the bureau des services financiers;

11. The broker-dealer maintains in good standing its provincial or territorial registration in Canada and its registration with or membership in a self-regulatory organization, a stock exchange, or the bureau des services financiers; and

12. The broker-dealer discloses to each customer in this state that the broker-dealer and its agents are not registered under the West Virginia Uniform Securities Act.

13. Pursuant to section 402 (b) of the Act, an exemption from securities registration in this state is provided for any offer or sale of a security effected by a Canadian broker-dealer excluded from definition of "broker-dealer" pursuant to paragraph 7 of this Order in transactions with the persons specified in paragraph 9 above.

14. Pursuant to section 403 of the Act, an exemption from the securities advertising filing requirement thereunder is provided for advertising relating to the securities involved in transaction with the persons specified in paragraph 9 above, effected by a Canadian broker-dealer excluded from definition of "broker-dealer" pursuant to paragraph 7 of this Order.

15. This order shall remain in effect until modified or vacated by the Commissioner.

16. Notice of the entry of this Order shall be given to the Applicant by mailing a copy by First Class United States Certified Mail, return receipt requested.

ENTERED THIS 18th DAY OF DECEMBER, 2002

Glen B. Gainer, III  
Commissioner of Securities

By: Chester F. Thompson  
Deputy Commissioner of Securities